# Examination and Lubrication Service Agreement.

To: Historic Theatre Group

Orpheum/State/Pantages Theatres

805 Hennepin Avenue Minneapolis, MN 55402

(Hereinafter Purchaser)

For: Orpheum Theatre

910 Hennepin Ave.

Minneapolis, MN 55403

State Theatre 805 Hennepin Ave Minneapolis, MN 55402

Pantages Theatre 710 Hennepin Ave. Minneapolis, MN 55403

By: ThyssenKrupp Elevator

1801 West River Road North Minneapolis, MN 55411-3481 612-588-7844 / 800-328-4087

## UNITS TO BE MAINTAINED

Building	<b>Unit Quantity</b>	Manufacturer	Type of Unit	Unit ID or Serial #	# of Stops
Orpheum	One (1)	Montgomery	Traction Passenger	5174	Four (4)
Orpheum	One (1)	Montgomery	Hydraulic Service	5175	Two (2)
State Theatre	One (1)	Dover	Hydraulic Passenger	5024	Two (2)
State Theatre	One (1)	Wheel-O-Vater		5025	Two (2)
Pantages	Three (3)	ThyssenKrupp	Hydraulic Passenger	EW7587-89	Three (3)



# Dependable examination and lubrication service.

ThyssenKrupp Elevator will examine your elevator 4 times a year. This service includes the examination; the cleaning and lubrication of the machine, motor, interlocks, and controller; the lubrication of guide rails; and making of minor adjustments at the time of the regular examinations. We will furnish the necessary lubricants and cleaning materials, but do not include the replacement of hydraulic fluid. This agreement is not for full maintenance service.

ThyssenKrupp Elevator-employed and supervised elevator technicians, who are among the most trusted in the industry, will provide all maintenance courteously and dependably.

We will visit your elevators during normal business hours, Monday through Friday, 8:00 am to 4:30 pm (except scheduled holidays). You agree to pay for any service, including overtime work, which is beyond the scope of this agreement at our usual billing rates.

#### At a reasonable cost.

The price for the services as stated in this agreement shall be Six Hundred and Ninety Dollars (\$690.00) per quarter, payable quarterly in advance. Non-payment by the Purchaser of any monies owing under this agreement shall result in the accrual of interest on the delinquent monies at the maximum rate allowable by law. Time is of the essence.

This agreement is effective for five (5) years starting January 1, 2004 and is non-cancelable, except with thirty (30) days written notice for reasons of non-performance. To ensure continuous service, this agreement will be automatically renewed for successive five (5) year periods, unless either party timely serves written notice upon the other party of its intention to cancel at least ninety (90) days before the end of the initial five (5) year period, or ninety (90) days before the end of any subsequent five (5) year renewal period.

Notice shall be sent by certified mail, return receipt requested. Time is of the essence.

Early Payment Discount. If you pay in advance for twelve (12) months of service on the units covered in this agreement, you may take a 3% discount from the annual price.

## Special conditions.

Annual hydraulic safety test included. The Wheel-O-Vater at the State Theatre is on an oil and grease preventative contract.

## Your responsibilities.

Safety. You agree to instruct or warn passengers in the proper use of the equipment and to keep the equipment under continued surveillance by competent personnel to detect irregularities between elevator examinations. You agree to report immediately any condition that may indicate the need for correction before the next regular examination. You agree to shut down the equipment immediately upon manifestation of any irregularities in operation or appearance of the equipment, notify us at once, and keep the equipment shut down until the completion of any repairs. You agree to give us verbal notice immediately and written notice within ten (10) days after any occurrence or accident in or about the elevator. You agree to provide our personnel a safe place in which to work. We reserve the right to discontinue work in the building whenever, in our sole opinion, our personnel do not have a safe place in which to work. You agree to provide a suitable machine room including secured doors, waterproofing, lighting, ventilation and heat to maintain the room at a temperature of 50°F minimum to 90°F maximum. You also agree to maintain the elevator pit in a dry condition at all times. Should water or other liquids become present, you will contract with others for removal and the proper handling of such liquids.

Other. You agree not to permit others to make alterations, additions, adjustments, or repairs or replace any component or part of the equipment during the term of this agreement. You agree to accept our

judgment as to the means and methods to be employed for any corrective work under this agreement. In the event of the sale, lease or other transfer of the elevator(s) or equipment described herein, or the premises in which they are located, you agree to see that such successor is made aware of this agreement and assumes and agrees to be bound by the terms hereof for the balance of the agreement, and subject to termination as herein provided, or otherwise be liable for the full unpaid balance due for the full unexpired term of the agreement.

In consideration of ThyssenKrupp Elevator performing the services herein specified, you expressly agree to indemnify, defend, save harmless, discharge, release and forever acquit ThyssenKrupp Elevator, our officers, agents and employees from and against any and all claims, demands, suits, and proceedings brought against us or our employees of any nature whatsoever, including but not limited to loss, damage, injury or death that are alleged to have arisen from or alleged to be in connection with the presence, use, misuse, maintenance, installation, removal, manufacture, design, operation or condition of the equipment covered by this agreement, or the associated areas surrounding such equipment, specifically including claims or losses alleged or proved to have arisen from the negligence of ThyssenKrupp Elevator or our employees, except that your duty to indemnify does not apply to claims or losses determined to be caused or resulting from the sole negligence of ThyssenKrupp Elevator or our employees.

You expressly agree to name ThyssenKrupp Elevator as an additional insured in your liability and any excess (umbrella) liability insurance policy(ies). Such insurance must insure us for those claims or losses referenced in the above paragraph, and for claims or losses arising from the sole negligence of ThyssenKrupp Elevator or our employees. You hereby waive the right of subrogation.

### Other considerations.

We assume no responsibility for any part of the elevator equipment except that upon which work has been done under this agreement. We will examine and lubricate your equipment in its present condition. No work, service, examination or liability on the part of ThyssenKrupp Elevator, other than that specifically mentioned herein, is included or intended. We assume no responsibility for any loss or damage resulting from obsolescence or misuse of the equipment, another's negligence, loss of power, blown fuse(s), tripped stop switch(es), theft, vandalism, explosion, fire, power failure, water damage, storm, lightning, strikes, lockouts, acts of God, or any other cause beyond our control. It is agreed that we do not assume possession or control of any part of the equipment and that such remains yours exclusively as the owner, lessor, lessee or manager thereof.

Annual price adjustments. As the costs we incur for providing elevator service increase and decrease annually, we will adjust the price of your service accordingly on an annual basis. We will adjust your monthly price based on the percentage change in the average rate paid to elevator examiners. This rate consists of the hourly rate paid to examiners plus fringe benefits and union welfare granted in place of or in addition to the hourly rate. Fringe benefits include pensions, vacations, paid holidays, group insurance, sickness and accident insurance, and hospital insurance.

Pricing may also increase or decrease in the event the equipment is modified from its present state.

Overdue invoices. A service charge of 1½% per month, or the highest legal rate, whichever is less, shall apply to overdue accounts. If you do not pay any sum within sixty (60) days from the billing date, we may also choose to do one of the following: 1) suspend all service until all amounts due have been paid in full, or 2) declare all sums for the unexpired term of this agreement

due immediately and terminate this agreement. If ThyssenKrupp Elevator elects to suspend service, we shall not be responsible for damages or injuries to persons or property from the lack of service. Upon resumption of service, you will be responsible for payment to ThyssenKrupp Elevator of any costs we incur as a result of the suspension of service.

Non-performance. "Non-performance" is defined as our inability to remedy any deficiencies within thirty (30) days after receiving written notification from you.

Other conditions. In the event a third party is retained to enforce, construe or defend any of the terms and conditions of this agreement or to collect any monies due hereunder, either with or without litigation, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

You hereby waive trial by jury and do further hereby consent that venue of any proceeding or lawsuit under this agreement shall be in Hennepin, Minnesota.

In the event any portion of this agreement is deemed invalid or unenforceable by a court of law, public policy or statute, such finding shall not affect the validity or enforceability of any other portion of this agreement.

Our rights under this agreement shall be cumulative and our failure to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by us in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this agreement.

### Acceptance.

Your acceptance of this agreement and its approval by an authorized manager of ThyssenKrupp Elevator will constitute exclusively and entirely the agreement for the services herein described. All other prior

representations or agreements, whether written or verbal, will be deemed to be merged herein, and no other changes in or additions to this agreement will be recognized unless made in writing and properly executed by both parties. Should your acceptance be in the form of a purchase order or other similar document, the provisions of this agreement will govern in the event of a conflict. This proposal is hereby accepted in its entirety and shall constitute the entire agreement as contemplated by you and us.

No agent or employee shall have the authority to waive or modify any of the terms of this agreement without the written approval of an authorized ThyssenKrupp Elevator manager.

#### Accepted:

THYSSENKRUPP ELEVATOR CORPORATION  By: Signature of ThyssenKrupp Elevator Representative)				
Bekki Tovar				
612-588-7844				
Date:				
HISTORIC THEATRE GROUP				
By:  (eignature of Authorized Individual)  Vaso, So, Authorized (Printed or Typed Name)				
Title: CFO				
Date:				
ThyssenKrupp Elevator Approval:				
Ву:				
Title:				
Date:				